

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LA UNIÓN DEL PUEBLO ENTERO, et al.,

Plaintiffs,

v.

GREGORY W. ABBOTT, et al.,

Defendants.

Civil Action No. 5:21-cv-844 (XR)
(consolidated cases)

JOINT ADVISORY REGARDING SCHEDULE

Pursuant to this Court's direction, *see* Text Order (Apr. 27, 2023), the parties have met and conferred regarding the scheduling order in this case. In light of the stay imposed on existing deadlines, the parties propose the following new deadlines concerning the close of discovery and pretrial motions.

- Supplemental expert reports required under Rule 26(e): **May 19, 2023**. This deadline would not include Dr. Dan Smith, whose Rule 26(e) report may incorporate documents that State Defendants intend to produce by May 22. The HAUL Plaintiffs propose that the deadline for Dr. Smith to produce a Rule 26(e) report be **June 15, 2023**. Conversely, State Defendants and Intervenor-Defendants propose that the deadline be **June 5, 2023**.
- State Defendants reserve the right to designate a rebuttal expert to respond to the Rule 26(e) Report of Dr. Smith, and to serve on all parties the materials required by Fed. R. Civ. P. 26(a)(2)(B) for any such rebuttal expert, to the extent not already served, within fifteen (15) days of receipt of Dr. Smith's report.

- Close of all discovery: **May 19, 2023**. This deadline would not foreclose further discovery concerning newly disclosed documents following the lifting of any stay of this Court's prior orders concerning the state legislative privilege. *See* Order, ECF No. 561; Order, ECF No. 425; *see also* Text Order (Apr. 27, 2023); Order Granting Stay, ECF No. 567; Order Granting Stay, ECF No. 429. This deadline would not foreclose State Defendants from taking out-of-time the deposition of Tania Chavez, who was disclosed by LUPE Plaintiffs as an individual likely to have discoverable information. State Defendants agreed to postpone Ms. Chavez's deposition at LUPE Plaintiffs' request following a crisis in Brownsville, Texas. The deposition will be rescheduled once the emergency has concluded. In addition, the parties previously agreed to keep open the depositions of Plaintiffs' experts for the purposes of supplemental reports, whereby any additional deposition taking place after the close of expert discovery will be limited solely to the content of any supplemental report, and not be used to reopen any deposition as to the content of general expert reports except to the extent that a supplemental report has altered or amended the content of such general reports. This deadline will not foreclose any expert deposition taken pursuant to the parties' agreement.
- Dispositive and *Daubert* motions: **May 26, 2023**. To the extent that this Court no longer intends to begin trial on September 11, 2023, Private Plaintiffs propose that this deadline be postponed by one week, to **June 2, 2023**.
- Briefs in opposition to dispositive and *Daubert* motions: **June 23, 2023**. To the extent that this Court adopts a June 2 motion deadline, the parties propose that this deadline also be postponed by one week, to **June 30, 2023**.

- Replies in support of dispositive and *Daubert* motions: **July 14, 2023**. To the extent that this Court adopts a June 2 motion deadline, the parties propose that this deadline also be postponed by one week, to **July 21, 2023**.
- Notwithstanding any other portion of a new scheduling order, no new written discovery shall be propounded to, or depositions noticed to, Jacque Callanen, Bexar County Elections Administrator; Joe Gonzales, Bexar County Criminal District Attorney; John Creuzot, Dallas County Criminal District Attorney; Michael Scarpello, Dallas County Elections Administrator; Lisa Wise, El Paso County Elections Administrator; Yvonne Rosales, former El Paso County District Attorney; Clifford Tatum, Harris County Elections Administrator; Isabel Longoria, former Harris County Elections Administrator; Kim Ogg, Harris County District Attorney; Hilda A. Salinas, Hidalgo County Elections Administrator; Ricardo Rodriguez, Jr., former Hidalgo County Criminal District Attorney; Toribo “Terry” Palacios, Hidalgo County Criminal District Attorney; Yvonne Ramon, former Hidalgo County Elections Administrator; Dana DeBeauvoir, former Travis County Clerk; Dyana Limon-Mercado, Travis County Clerk; Jose Garza, Travis County District Attorney; and former Interim Travis County Clerk Rebecca Guerrero, Division Director, Travis County Clerk's Office; or to any of the successors, employees, offices, or departments of the foregoing.

The parties remain ready to begin trial in this case on September 11, 2023, including maintaining all pretrial deadlines. However, the parties take differing positions concerning the impact of pending appeals on the viability of this trial date.

- The United States and the OCA Plaintiffs will be ready to begin trial on September 11, 2023, on their claims under Section 101 of the Civil Rights Act, 52 U.S.C.

§ 10101(a)(2)(B), regardless of the status of pending appeals concerning the state legislative privilege. *See LULAC Texas v. Hughes*, No. 22-50435 (5th Cir.); *LUPE v. Bettencourt*, No. 23-50201 (5th Cir.).

- Private Plaintiffs, including OCA Plaintiffs, are prepared to proceed with trial on September 11, 2023 on the remaining claims, so long as the withheld documents are produced by that date or the appeals are resolved and the relevant parties are not required to produce the withheld documents, and provided that the parties are permitted to take and reopen depositions immediately—including during trial—for the limited purpose of addressing any newly produced documents related to the legislative privilege appeals. To the extent that appeals concerning legislative privilege remain pending, Private Plaintiffs propose that trial should not go forward without all relevant evidence. To the extent that documents subject to this Court’s orders concerning the state legislative privilege are produced soon after September 11, or appeals are resolved and the relevant parties are not required to produce the withheld documents, Private Plaintiffs propose that trial may begin on or before September 27, 2023, without interfering with County Defendants’ administration of the November 7, 2023, General Election. *See Joint Advisory at 2, ECF No. 576.*
- State Defendants and Intervenor-Defendants propose that trial should begin on September 11, 2023, regardless of the status of outstanding appeals concerning the state legislative privilege.

Respectfully submitted,

Date: May 8, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

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